

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 25-CR-007-JFH

CARL ANTHONY EPPS, II,

Defendant.

OPINION AND ORDER

Before the Court is a Motion to Dismiss the Indictment (“Motion”) filed by Defendant Carl Anthony Epps, II (“Defendant”). Dkt. No. 23. Defendant also filed a supplement to his Motion. Dkt. No. 24. The United States of America (“Government”) opposes the Motion. Dkt. No. 25. For the following reasons, Defendant’s Motion [Dkt. No. 23] is DENIED.

BACKGROUND

On January 6, 2025, Defendant was charged by indictment with two counts of felon in possession of a firearm and ammunition, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8). Dkt. No. 2. Defendant is set for trial on the Court’s March 10, 2025 docket. Dkt. No. 11.

AUTHORITY AND ANALYSIS

Defendant moves for dismissal of the indictment based on *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S.Ct. 2111 (2022), arguing that the federal felon-in-possession statute codified at 18 U.S.C. § 922(g) is unconstitutional as applied. Dkt. No. 23 at 1-2. Specifically, Defendant argues that “the Nation’s historical tradition of firearms regulation does not support permanently disarming persons for crimes like those allegedly committed by [Defendant.]” *Id.* at 2. However, in his supplement, Defendant acknowledges that the Tenth Circuit’s recent published

decision in *Vincent v. Bondi*, --- F.4th --- (10th Cir. 2025) is binding on this Court and, therefore, forecloses his argument.¹ Dkt. No. 24.

In 2022, the Supreme Court examined the Second Amendment’s constitutional protection of the right to keep and bear arms. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S.Ct. 2111 (2022). *Bruen* did not concern a criminal statute. Rather, it involved a challenge to federal firearms licensing. *Id.* The *Bruen* decision included a nuanced discussion of Second Amendment caselaw and announced a new rule for evaluating firearms regulation: “[T]he government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Id.* at 2127.

In September of 2023, the Tenth Circuit issued an opinion addressing *Bruen*. *Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023). In *Vincent*, the Tenth Circuit considered whether *Bruen* overruled its precedential decision in *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009), wherein the Tenth Circuit upheld the constitutionality of 18 U.S.C. § 922(g)(1), prohibiting the possession of firearms by *all* previously convicted felons. *Id.* at 1202. The Tenth Circuit held that because *Bruen* did not “indisputably and pellucidly abrogate[]” its ruling in *McCane*, it was obligated to apply its prior precedent. *Vincent*, 80 F.4th at 1202.

In June of 2024, the United States issued its opinion in *United States v. Rahimi*, which considered the constitutionality of 18 U.S.C. § 922(g)(8). *United States v. Rahimi*, 602 U.S. 680 (2024). The *Rahimi* Court articulated the Second Amendment constitutional test to require lower courts to consider “whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition.” *Id.* at 692 (emphasis added). Although not purporting to

¹ For purposes of preserving his argument for appeal, Defendant does not withdraw his Motion. Dkt. No. 24 at 1.

“undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment,” the Supreme Court concluded, “[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.” *Id.* at 702.

On July 2, 2024, on petition for writ of certiorari, the United States Supreme Court vacated and remanded the Tenth Circuit’s decision in *Vincent* “for further consideration in light of *United States v. Rahimi*.” *Vincent v. Garland*, 144 S. Ct. 2708 (Mem) (July 2, 2024). On February 11, 2025, the Tenth Circuit issued its decision following remand concluding that *Rahimi* did not overrule its prior precedent in *McCane*. *Vincent v. Bondi*, --- F.4th ---, 2025 WL 453999 (10th Cir. 2025). Following this decision, *McCane*, which upholds the constitutionality of 18 U.S.C. § 922(g)(1), prohibiting the possession of firearms by all previously convicted felons, remains binding on this Court. For this reason, Defendant’s argument is foreclosed by *McCane* and *Vincent*.

CONCLUSION

IT IS THEREFORE ORDERED that Defendant’s Motion to Dismiss the Indictment [Dkt. No. 23] is DENIED.

DATED this 21st of February 2025.



JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE